

**BETWEEN**

**BM LIMITED  
APPLICANT**

**AND**

**YN  
RESPONDENT**

Date of Order:

23 February 2015

Referee:

Referee Smallholme

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that YN is to pay BM Limited the sum of \$1,727.98 with payment to be made by 5pm on Monday 16 March 2015.**

### **Reasons**

[1] In mid-2012 ABC Limited (“ABC”) undertook remedial building, plumbing and tiling work to the bathroom at YN’s home, on behalf of YN’s insurance company. ABC contracted with BM Limited (BM) to provide plumbing services.

[2] During the course of the remedial work, YN decided to alter the vanity area. The parties agree this work was beyond the scope of the remedial work being completed by ABC

[3] BM claims \$2,376.07 for work completed for the renovation work. This includes \$115.00 to re-install the toilet; \$868.29 to pipe out the new vanity; \$684.95 to fit off the new vanity; \$350.33, \$70.00 and \$287.50 for collection, service and filing fees; and interest at the prescribed rate of 5% at the Tribunal’s discretion.

[4] AA, of ABC, attended the hearing by phone to give evidence and the parties have accepted his undertaking to pay BM the amount of \$115.00 for the re-installation of the toilet.

### **Issues**

[5] The issues are:

- a. Was the amount charged by BM to pipe out and fit off the new vanity reasonable?
- b. Was BM entitled to claim collection, service and filing fee costs?
- c. Should the Tribunal award interest?

*Was the amount charged by BM to pipe out and fit off the new vanity reasonable?*

[6] The law requires that, where a price is not agreed between the parties, the consumer is only required to pay a reasonable price for materials and services (Consumer Guarantees Act 1993, ss 11 and 31).

[7] YN maintains the amount charged by BM was not reasonable.

[8] AA stated he considered it unlikely there had been a “double-up” whereby BM had been paid by ABC and also claimed against YN. He stated he went “strictly over invoices” and there was a fixed rate for disconnecting and re-connecting the pipe work for the work done by way of reinstatement. I find the charges are therefore for the extra work completed.

[9] There is no technical evidence from any other plumber to provide a basis for YN’s position. There has been ample time to obtain this evidence given the length of time between completion and filing of the claim and the adjournments allowed in this matter.

[10] There was insufficient evidence to establish the amount claimed for the work was not reasonable. Therefore YN is liable to pay the amounts claimed of \$868.29 and \$684.95 for this work.

*Was BM entitled to claim collection, service and filing fee costs?*

[11] The law is that these amounts can be claimed only where they are allowed for in contract, as the Disputes Tribunal cannot award costs (s 43, Disputes Tribunals Act 1988).

[12] BB (for BM) maintained YN had signed a job authorisation form on 20 April 2012 which stated she accepted BM’s terms of trade, which included a right to charge costs (Clause 5). However, BM’s claim this document had most probably been signed by YN was not made out (on the balance of probabilities) because:

- (i) YN was very clear in her recollection of events, in that the only document she had signed in relation to BM was to acknowledge receipt of a courier pack which contained parts. YN stated the initials on the form did not belong to her.
- (ii) The BM employee who had completed the form and allegedly taken YN’s signature was not available to give evidence to this effect, therefore it was largely an assumption that this transaction had occurred and YN had signed the form.

*Should the Tribunal award interest?*

[13] The Tribunal may award interest at the prescribed rate of 5% per annum if it thinks fit (s 20, Disputes Tribunals Act).

[14] I understand YN considered her refusal to pay the debt of \$1,553.24 was reasonable. However there was no informed or technical evidence to support her view the amounts charged by BM for materials and labour of \$868.29 and \$684.95 were not reasonable.

[15] The general principle is that goods and services provided should be paid for, or opportunity given for remedy. Any complaints as to the quality of the work completed by BM in the remedial work were always the responsibility of ABC. YN's position has caused considerable delay in payment for BM. This is a situation where it is appropriate for interest to be awarded at the Tribunal's discretion.

[16] I have allowed 27 months' interest for the period December 2012 to February 2015, allowing for payment within a month of the last invoice dated 30 September 2012 and a generous period to resolve concerns (by presenting evidence in support of the position the costs were not reasonable).

[17] The total amount due is \$1,553.24. Interest at 5% per annum is  $\$77.66 = \$6.47$  per month x 27 months = \$174.74. The total for YN to pay is \$1,727.98.